

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ALLEN O. JOHNSON §
v. § CIVIL ACTION NO. 2:06cv448
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON MOVANT'S MOTION FOR CERTIFICATE OF APPEALABILITY

The Petitioner Allen Johnson filed this application for the writ of habeas corpus under 28 U.S.C. §2254 challenging the legality of his conviction. The petition was denied on motion to vacate or correct his sentence under 28 U.S.C. §2255. The motion was denied on February 6, 2007, and final judgment entered on that date. On March 5, 2007, Johnson filed a notice of appeal, together with a motion for a certificate of appealability.

On May 10, 2007, the Magistrate Judge issued a Report recommending that the motion for a certificate of appealability be denied. The Magistrate Judge noted that Johnson's application for a certificate of appealability raised claims for the first time, which is improper under Fifth Circuit precedent. Roberts v. Cockrell, 319 F.3d 690, 695 (5th Cir. 2000).

On May 24, 2007, Johnson notified the Court that he had received the Report of the Magistrate Judge on May 16, that he objected to it, and that he would file a brief detailing his objections within the next ten days. To date, however, no objections or brief have been forthcoming, nor has Johnson contacted the Court in any way since that time.

The Court has reviewed the Magistrate Judge's Report and has determined that this Report is correct, except for one minor typographical error - the Report states that Johnson filed his state habeas petition on July 5, 2006, when in fact this petition was filed on July 5, 2005. This minor typographical error does not affect the substantive rights of any party. It is accordingly

ORDERED that the Report of the Magistrate Judge on the Petitioner's motion for a certificate of appealability (docket no. 12) is ADOPTED as the opinion of the District Court, with the exception that the statement that Johnson filed his state habeas corpus application on July 6, 2006, is MODIFIED to read that Johnson filed his state habeas corpus application on July 6, 2005.

It is further

ORDERED that the Petitioner's motion for a certificate of appealability (docket no. 9) is hereby DENIED.

SIGNED this 13th day of August, 2007.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE